

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:18-cr-0187-SEB-MJD
)	
BREON PRESTON,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On September 10, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on July 26, 2019. [Dkt. 19.] Defendant Preston appeared in person with his appointed counsel Dominic Martin. The government appeared by Kendra Klump, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Tasha Taylor.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Preston of his rights and ensured he had a copy of the Petition. Defendant Preston orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Preston admitted Violation Nos. 1, 3, and 6 as set forth in the Petition. Government moved to dismiss Violation Nos. 2, 4, 5 and 7 and the same was granted.

3. The allegations to which Defendant admitted, as fully set forth in the Petition, are:

Violation

Number

Nature of Noncompliance

1

“The defendant shall not commit another federal, state, or local crime.”

On July 15, 2019, a charge of Theft, a misdemeanor offense, was filed against the offender in Hancock County, Indiana, under cause number 30D02-1907-CM-001368. He was subsequently arrested on a warrant on July 18, 2019. The charge is pending in the Hancock County Superior Court 2.

According to the Affidavit for Probable Cause, on July 14, 2019, an officer from the Hancock County Police Department was dispatched to a Meijer store on a report of a theft in progress. While en route to Meijer, the officer received information that two suspects left in a gray Chevrolet Trailblazer and were at the Meijer gas station. The suspected vehicle was then encountered by the officer. The alleged accomplice was pumping gas while the offender was observed in the passenger seat. In the process of the officer securing the accomplice, Mr. Preston allegedly got into the driver's seat and drove away from the scene. A check of the vehicle registration indicated it was registered to the offender as the owner. The offender's accomplice was later positively identified by a loss prevention officer as one of the suspects believed to have stolen from the store. Mr. Preston was identified via photograph. The suspected stolen items were DVDs, alcohol, and an air mattress. Only the DVDs were recovered. Initial charges for Mr. Preston included felony theft with a prior, operating a vehicle never having received a license, and resisting law enforcement with a vehicle.

As previously reported to the Court, Mr. Preston was charged under cause number 49G01-1808-F4-026785 in Marion County, Indiana, on August 15, 2018, with Burglary and Theft, felony offenses. He remained in custody from August 30, 2018, until November 16, 2018, when the charges were dismissed.

3

“The defendant shall refrain from any unlawful use of a controlled substance.”

As previously reported to the Court, the offender submitted a urine sample on August 23, 2018, which tested positive for marijuana. On March 6, and March 13, 2019, he submitted urine samples which tested positive for cocaine.

- 6 **“You shall not have unsupervised meetings, activities, or visits, or intentional communications with any minor unless they have been disclosed to the probation officer and approved by the court. You shall not have supervised meetings, activities, visits, or intentional communications with any minor unless they have been approved by the probation officer. Before you may request approval for such meetings, activities, visits, or intentional communications (unsupervised or supervised), you must notify the person(s) having custody of any such minor(s) about the conviction in this case and the fact that you are under supervision.”**

On July 18, 2019, the probation officer made contact with the offender at his residence where a home inspection was conducted. During a walk-through of the home and upon entering a bedroom, the probation officer observed a blanket piled in a corner of the room. Seconds later, Mr. Preston's daughter, age 3, stood up from where the blanket was located. Prior to the probation officer entering the room, the offender was stalling in an attempt to prevent entry. Mr. Preston had not been given permission by the probation officer to have contact with any minor child, including his daughter. Additionally, he had not made any disclosures to the probation officer prior to the child being discovered in the home.

4. The Court confirmed that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is V.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 18 to 24 months' imprisonment.


5. The parties jointly recommended a sentence of eighteen (18) months incarceration with no supervised release to follow. Defendant requested placement at FCI Ashland, Kentucky.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions set forth in Violation Nos. 1, 3, and 6 of the Petition, and recommends that Defendant's supervised release be revoked, and that Defendant be sentenced to the custody of the Attorney General or his designee for a period of eighteen (18) months with no supervised release to follow. The Defendant is to be taken into custody immediately pending the District Judge's action on this

Report and Recommendation. The Magistrate Judge further recommends that the Court recommend Defendant's placement at FCI Ashland, Kentucky.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 10 SEP 2019



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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